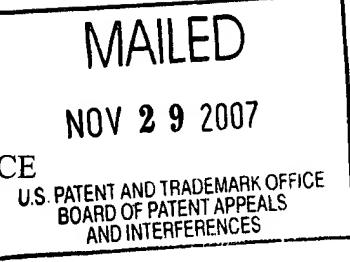


UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: TONY ALTWIES AND RAYMOND CHOCK

Application No. 09/654,858

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on November 26, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

EXAMINER'S ANSWER

An examination of the application reveals that the Final Rejection mailed March 25, 2005 and the Examiner's Answer mailed April 19, 2007, fails to include claim 26 in the statement of the grounds of rejection. The statement of rejections are listed as follows:

1. Claims 10-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Biddle et al (U.S. Patent Application Pub. No. 2002/0107809).
2. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biddle et al (U.S. Patent Application Pub. No. 2002/0107809) in view of Hayes et al (U.S. PG Pub No. 2001/0011341).

Correction is required.

Grounds of Rejection, Incorporation By Reference

A review of the Examiner's Answer reveals that it is not in compliance with the Manual of Patent Examining Procedure (MPEP). The section entitled Grounds of Rejection does not identify each grounds of rejection maintained by the examiner. The Examiner further states, "See office action mailed March 25, 2005". Incorporation of a rejection by reference is improper.

According to the MPEP § 1207.02:

An examiner's answer should not refer, either directly or indirectly, to any prior Office action without fully restating the point relied on in the answer.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the examiner:

- 1) issue and mail a revised Examiner's Answer clarifying the rejection of claim 26 and for correction of the Ground of Rejection section; and

2) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: Patrick J. Nolan
PATRICK J. NOLAN
Deputy Chief Appeals Administrator
(571) 272-9797

PJN/tsj

cc: DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET
SUITE 800
SAN FRANCISCO, CA 94111